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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
1998 Biennial Regulatory Review —	)	
Amendment of Parts 2, 25 and 68 of the	)	
Commission's Rules to Further Streamline the	)	
Equipment Authorization Process for Radio	)	GEN Docket No. 98-68
Frequency Equipment, Modify the Equipment	)	
Authorization Process for Telephone Terminal	)	
Equipment, Implement Mutual Recognition	)	
Agreements and Begin Implementation of the	)	
Global Mobile Personal Communications by	)	
Satellite (GMPCS) Arrangements	)	

To: The Commission

COMMENTS OF MOBILE COMMUNICATIONS HOLDINGS, INC.

Mobile Communications Holdings, Inc. ("MCHI"), by counsel and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby comments on the above-captioned Notice of Proposed Rulemaking,[1/] which includes a Commission proposal to adopt interim procedures for the processing of mobile Earth station applications pursuant to the terms of the 1997 Memorandum of Understanding concerning Global Mobile Personal Communications Services offered by satellite ("GMPCS MOU"). MCHI is a signatory of the GMPCS MOU, strongly supports its provisions, and believes that it is necessary for the Commission to move forward as expeditiously as possible to adopt rules

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1/ *See Notice of Proposed Rule Making*, FCC 98-92, slip op. at 18 (¶ 45) (released May 18, 1998) (GEN Docket No. 98-68) ("NPRM").

under which entities wishing to provide such services can obtain blanket authority to operate mobile Earth terminals within the United States. Nonetheless, MCHI also strongly believes that the rules under which such entities are allowed to go forward must be final rules, which will then apply in a non-discriminatory manner to all operators that will ultimately provide services in the affected bands. Failure to establish definitive ground rules at the outset that will apply to all of the systems utilizing Code Division Multiple Access ("CDMA") techniques in the so-called "Big LEO" bands[2/] would likely produce competitive disparities between or among operators, as well as difficult enforcement problems for the Commission, and, potentially, adverse financial impact on consumers who may purchase interim terminals that would be subject to possible deactivation under final rules.

I. INTRODUCTION AND STATEMENT OF INTEREST

MCHI is a U.S. corporation formed in 1990 for the purpose of designing, developing and implementing a global MSS system. It has been licensed by the Commission to construct, launch and operate the Ellipso® MSS system,[3/] which will offer voice and data telecommunication services to users worldwide beginning in the year 2001. Ellipso® is a patented "Big LEO" MSS system that will employ elliptical and

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2/ The bands 1610-1626.5 MHz and 2483.5-2500 MHz.

3/ *See Mobile Communications Holdings, Inc.*, DA 97-1367, slip op. (IB/OET, released July 1, 1997).

equatorial medium-earth orbit satellites operating in the 1610-1621.35 MHz (transmit) and 2483.5-2500 MHz (receive) frequency bands. Accordingly, it has a keen interest in the development and application of the technical standards to be used in these bands.

II. DISCUSSION

At the present time, there is no domestic out-of-band ("OOB") emission standard for operation of mobile Earth terminal ("MET") transmissions in the Big LEO MSS bands that is specifically designed to protect the Global Positioning Service ("GPS") or other radionavigation-satellite service ("RNSS") applications in the RNSS bands between 1559 and 1574.397 MHz and between 1576.443 and 1610 MHz. The Commission's existing rules currently include specific restrictions to protect only the 1574.397-1576.443 MHz band,[4/] standards which were adopted by the Commission in 1994 as a result of the work of the MSS above 1 GHz Negotiated Rulemaking Committee ("NRC").[5/]

In the NPRM, the Commission proposes to begin certifying on an interim basis GMPCS equipment that meets NTIA's suggested out-of-band emission limit as set

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4/ *See* 47 C.F.R. § 25.213(b) (1997). As noted in the NPRM, the Radiocommunication Sector of the ITU has also adopted recommended standards for OOB emissions limits from METs that transmit inter alia, in the Big LEO bands. *See* NPRM, FCC 98-92, slip op. at 17 (¶43) and n.30; ITU-R Recommendation M.1343 at Annex 2, Table 2A1.

5/ *See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile-Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands,* 9 FCC Rcd 5936, 5987-88 (¶¶130-133) (1994). MCHI participated in the work of the NRC and supports its determinations.

forth in a petition for rulemaking, filed by NTIA in September 1997, that is now pending before the Commission. For reasons set forth more fully below, authorization of terminals on an interim basis would provide a significant competitive advantage to one of the licensed CDMA systems, Globalstar, and potentially prejudice later-licensed systems such as MCHI's Ellipso®. Thus, MCHI urges the Commission not to permit certification on an interim basis.

NTIA proposes both interim and permanent limitations on handset operations in the MSS service bands at 1610-1626.5 MHz to protect RNSS, and more specifically, GPS and GLONASS systems.[6/] Specifically, NTIA has asked for adoption of a standard requiring that METs commissioned prior to January 1, 2002 meet an "interim" OOB emissions limit of -64 dBW/MHz for wideband signals and -74 dBW/MHz for narrowband signals in the bands 1580.42-1605 MHz. *See* NTIA Petition at 2. NTIA also requests that "final" levels of -70 dBW/MHz for wideband emissions and -80 dBW/MHz for narrowband emissions in the same bands be made effective as of January 1, 2005. *See id.*[7/] Under NTIA's proposal, no new METs that do not meet the "final" standard would be commissioned after January 1, 2002, and any METs in operation on December 31, 2004 that do not meet the "final" standard would need to be:

6/ *See* Letter from Richard D. Parlow, Associate Administrator, Spectrum Management, NTIA, to Regina Keeney, Chief, International Bureau, FCC, dated September 18, 1997, RM-9165, ("NTIA Petition").

7/ Again these are the current limitations specified for a narrower band of frequencies under the Commission's rules. *See* 47 C.F.R. § 25.213(b) (1997).

(i) permanently deactivated; (ii) brought into conformity with the "final" limits; or (iii) restricted to operate on frequencies in the upper end of the operating band so that the "final" limits are met in the band 1559-1605 MHz. *See* NTIA Petition at 3.

The NTIA submitted its Petition for Rule Making in September 1997, but it has not yet been crafted by the Commission into a formal rulemaking proposal.[8/] In the NPRM, the Commission nonetheless proposes that entities seeking to operate mobile terminals in the 1610-1626.5 MHz bands be required to comply with the NTIA's proposed "final" OOB emission limit of -70 dBW/MHz within the bands 1559-1605 MHz, which it characterizes as "the strictest out-of-band emission limit proposed at this time." NPRM, FCC 98-92, slip op. at 18 (¶ 45).

The NTIA Petition remains at this juncture only a proposal, and MCHI does not believe that it is prudent to permit equipment manufacturing to proceed without more concrete standards that are uniformly applied to all of the licensed CDMA systems. It is a necessary component of application processing that the Commission consider *prior to grant* whether the proposed operation contemplated will comply with the technical requirements of the service. Without such a critical threshold determination, there is great potential for a chaotic transition once final rules are put in place if those ultimate standards are inconsistent with the initial premises upon which service was authorized.

[8/] On December 8, 1997, MCHI filed a "Statement in Partial Support of NTIA Rulemaking Petition" in which MCHI urged the Commission to invite further comment and analysis with respect to NTIA's proposal.

Moreover, the potential exists for an unfair competitive advantage to one of the Big LEO systems if, for example, more stringent standards are ultimately adopted following rulemaking.

While the NTIA anticipated in its Petition potential means for bringing METs into compliance with more stringent OOB emission restrictions through software solutions (*e.g.*, by restricting frequency use to the upper portion of the transmit service band), such methodologies remain unproven, and have not been accepted to date in ITU-R working groups. Until these critical issues are resolved, it would be inappropriate for the Commission to certify GMPCS equipment on an interim basis unless all GMPCS systems are treated equally, and those companies deciding to proceed under interim standards do so at their own risk.

It is not enough that the NPRM proposes that all equipment approvals "be conditioned on meeting the requirements and procedures ultimately adopted."[9/] Despite the best intentions of applicants/licensees to bring themselves into compliance with final regulations, when adopted, it is simply not tenable to assume at the outset the ultimate ability of equipment designed in the absence of standards to meet requirements that have yet to be thoroughly evaluated. Proceeding to authorize the use of equipment under such conditions is a prescription for an enforcement nightmare. It is far easier, after all, to declare that non-compliant METs must cease operation than it is actually to reclaim large

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9/ NPRM, FCC 98-92, slip op. at 18 (¶46).

numbers of handsets (with the corresponding impact on consumers that may have purchased terminals) once they have been widely distributed in the event that they do not meet the standards implemented.

Moreover, in addition to the administrative headaches that would be visited on the Commission (and the financial impact on the public) in dealing with such a circumstance, interim certification of terminals could have a negative impact on other licensed Big LEO systems. On one hand, the Commission cannot have one technical standard that applies to Globalstar, and a separate, more stringent set of rules applicable to the other CDMA Big LEO systems. On the other hand, once a large number of METs have been disseminated in the marketplace, there will be an established base of users that may object to any limitations that might be placed upon the functioning of their equipment, and this objection could be used to argue for some priority rights vis-à-vis the other licensed Big LEO systems. Because of this potential problem, in the event that terminals are certified on an interim basis, the FCC should require such terminals to be leased, not sold, to consumers to avoid a financial impact on consumers if the interim terminals must be recalled or modified to meet more stringent permanent standards. In other words, the system operator and/or Earth station blanket licensee, rather than the user, would retain responsibility for the costs of bringing terminals into regulatory compliance.

The Commission should take into account the fact that there can be no assurance that steps presently contemplated to bring early entrants' transceivers into

compliance with later adopted rules will be feasible. For example, suggestions that METs that might initially meet a less stringent interim OOB emissions standard could later be automatically assigned to higher frequencies within the CDMA band fails to consider that such a method may not be workable consistent with spectrum sharing agreements ultimately concluded between these licensees. At the present time, there is no coordination agreement between Globalstar and MCHI, and technical choices made now with respect to handset standards cannot be permitted to prejudge later coordination discussions simply because there is no other way for Globalstar Earth terminals to avoid unacceptable emissions.[10/] Allowing such a result would unjustifiably prejudice later entrants for the near-term "expedience" of permitting the first service providers to manufacture and deploy handsets before meaningful final standards can be analyzed and approved.[11/] The Commission's well-intentioned desire to promote the success of the Big LEO GMPCS service would be far better served by doing the difficult but achievable work of setting final OOB emission standards at the outset, instead of deferring this task until service has already been inaugurated.

10/ This is not simply an idle concern in that AirTouch Satellite Services U.S., Inc. has already sought approval for METs for use in conjunction with Globalstar without making any demonstration of how it will comply with subsequently adopted technical standards. *See* AirTouch METs Application, File No. 1367-DSE-P/L, Exhibit C at 12 (as amended, April 29, 1998). See MCHI Comments (filed June 19, 1998).

11/ *See* NPRM, FCC 98-92, slip op. at 16 (¶40) ("we must allow for expedient certification of GMPCS equipment as soon as possible to remove a potential barrier to the success of service.")

III. CONCLUSION

For the reasons discussed above, MCHI believes that the Commission should not license METs utilizing CDMA techniques premised upon unsettled interim criteria that may be inconsistent with final standards ultimately adopted. Instead, it should initiate immediately, and conclude as expeditiously as possible, a rulemaking proceeding to adopt final standards for the operation of GMPCS mobile transceivers. Any other approach would place at risk the sound and orderly development of this service.

Respectfully submitted,

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